

VERMONT OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

RULES OF PROCEDURE

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RULES OF PROCEDURE

TABLE OF CONTENTS

Subpart A--General Provisions

SECTION

2200.1	Definitions.
2200.2a	Scope of rules; applicability of Vermont Rules of Civil Procedure and Administrative Procedures Act.
2200.2b	The Board.
2200.3	Use of gender and number.
2200.4	Computation of time.
2200.5	Extensions of time.
2200.6	Record address.
2200.7	Service and notice.
2200.8	Filing.
2200.9	Consolidation.
2200.10	Severance.
2200.11	Protection of trade secrets and other confidential information.

Subpart B--Parties and Representatives

2200.20	Party status.
2200.21	Intervention; appearance by nonparties.
2200.22	Representatives of parties and intervenors.

Subpart C--Pleadings and Motions

2200.30	Form.
2200.31	Caption; titles of cases.
2200.32	Notices of contest.
2200.33	Employer contests.
2200.34	Petitions for modification of abatement period.
2200.35	Employee contests.
2200.36	Statement of position.
2200.37	Response to motions.
2200.38	Failure to file.

Subpart D--Prehearing Procedures and Discovery

SECTION

- 2200.51 Prehearing conference.
- 2200.52 Requests for admissions.
- 2200.53 Discovery depositions and interrogatories.
- 2200.54 Failure to comply with orders for discovery.
- 2200.55 Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.

Subpart E--Hearings

- 2200.60 Notice of hearing.
- 2200.61 Postponement of hearing.
- 2200.62 Failure to appear.
- 2200.63 Payment of witness fees and mileage; fees of persons taking depositions.
- 2200.64 Reporter's fees.
- 2200.65 Transcript of testimony.
- 2200.66 Duties and powers of the Board and its judges.
- 2200.67 Disqualification of Board members and/or Board judges.
- 2200.68 Examination of witnesses.
- 2200.69 Affidavits.
- 2200.70 Deposition in lieu of oral testimony; application; procedures, form; rulings.
- 2200.71 Exhibits.
- 2200.72 Rules of evidence.
- 2200.73 Burden of proof.
- 2200.74 Objections.
- 2200.75 Interlocutory appeals; special; as of right.
- 2200.76 Filing of briefs and proposed findings with the Board or its judge; oral argument at the hearing.

Subpart F--Post Hearing Procedures

- 2200.90 Decisions of the Board or its judges.
- 2200.91 Discretionary review; petition.
- 2200.92 Review by the Board.
- 2200.93 Briefs before the Board.
- 2200.94 Stay of final order.
- 2200.95 Oral argument before the Board.

Subpart G--Miscellaneous Provisions

- 2200.100 Settlement.
- 2200.100a Withdrawal of notice of contest.
- 2200.101 Expedited proceeding.
- 2200.102 Standards of conduct.

Subpart G--Miscellaneous Provisions (Cont.)

SECTION

2200.103	Ex parte communication.
2200.104	Restrictions as to participation by investigative or prosecuting officers.
2200.105	Inspection and reproduction of documents.
2200.106	Restrictions with respect to former employees.
2200.107	Amendments to rules.
2200.108	Special circumstances; waiver of rules.
2200.109	Penalties.
2200.110	Official Seal - Vermont Occupational Safety and Health Review Board.

(Subparts H-L--Reserved)

Subpart M--Simplified Proceedings

2200.200	Purpose.
2200.201	Application.
2200.202	Eligibility for simplified proceedings.
2200.203	Commencing simplified proceedings.
2200.204	Filing of pleadings.
2200.205	Discussion of parties.
2200.206	Conference/hearing.
2200.207	Reporter present; transcripts.
2200.208	Decision of the Board or its judge.
2200.209	Discovery.
2200.210	Interlocutory appeals not permitted.
2200.211	Applicability of subparts.

SUBPART A - GENERAL PROVISIONS

AUTHORITY: The provisions of this part are issued under 21 VSA Section 230.

2200.1 Definitions.

As used in the rules in this part:

- (a) The term VOSHA Code means the Vermont Occupational Safety and Health Act, 21 VSA, Chapter 3, Subchapters 4 and 5.
- (b) The terms "Review Board", "person", "employer", "employee", "Act", "Commissioner", "Department", "Director", "Division", "Place of Employment", "Premises", "Rule", and "Secretary of Labor" have the meanings set forth in 21 VSA Section 203.
- (c) The term "citation" means a written communication from the Commissioner issued pursuant to 21 VSA Section 225(a) and describing with particularity the nature of the alleged violation of the VOSHA Code together with the date by which the alleged violation is to be corrected.
- (d) The terms "notification of proposed penalty" and "notification of failure to correct a violation" mean written communications from the Commissioner issued pursuant to 21 VSA Section 226(a) or 226(b).
- (e) The term "authorized employee representative" or "representative of employees" means a labor organization certified by the Vermont State Labor Relations Board as bargaining representative for the affected employees. In the absence of certification, it shall be the organization which the affected employees have designated and which has a collective bargaining relationship with the employer. If no labor organization has been certified or has such a collective bargaining relationship, the term "authorized employee representative" or "representative of employees" shall mean any person or persons designated by the affected employees to represent them for the purpose of proceeding under the VOSHA Code.
- (f) The term "proceeding" means any proceeding before the Board or its judges initiated under 21 VSA Section 226.
- (g) The term "Commissioner" means the Commissioner of Labor and Industry and shall include any of his duly authorized representatives.
- (h) The term "day" means a calendar day.
- (i) The term "working day" means all days except Saturdays, Sundays, or State holidays.

(j) The term "clerk" shall mean Clerk of the Review Board.

2200.2a

Scope of rules; applicability of Vermont Rules of Civil Procedure and Administrative Procedures Act.

- (a) The proceedings before the Board and its judges shall be governed by the rules in this part. In the absence of a specific provision, all procedures at such proceedings shall then be in conformity with the provisions of the Vermont Rules of Civil Procedure and the Administrative Procedures Act.
- (b) Nothing contained herein, or in the Vermont Rules of Civil Procedure or the Administrative Procedures Act, shall be construed as requiring any party (including a corporation) to be represented by an attorney-at-law.

2200.2b

The Board.

- (a) The Occupational Safety and Health Review Board is an establishment of the executive branch of the Vermont State Government created by the VOSHA Code, consisting of three members, appointed by the Governor by and with the advice and consent of the Senate, one of whom is designated by the Governor to serve as Chairman. The Chairman has the administrative authority and responsibilities set forth in 21 VSA Section 230. The Board will, in case of a vacancy in the office of the Chairman, or in the absence or inability of the Chairman to serve, designate one of its members Acting Chairman to serve during the period of vacancy, absence or inability.
- (b) The Clerk is selected by the Chairman and reports to the Board. Principal duties and responsibilities:
 - (1) Receives and processes notices of contest from the Commissioner. Reviews all formal submissions for sufficiency and compliance with the Board's rules of procedure, and serves notices and orders upon all parties as required herein. Immediately upon receipt of a notice of contest, he shall formally docket the case and notify all parties of the docket number.
 - (2) Schedules hearings, setting the time therefor in accordance with Section 2200.7, and designating places therefor as convenient as possible for the employers and employees.
 - (3) Prepares agenda and dockets of matters subject to action by the Board and is responsible for the

preparation of minutes with respect to such actions.

- (4) Processes all formal submissions to the Board.
 - (5) Serves as the legal custodian of the Board's seal, property, papers, and legal and public records.
 - (6) Processes and certifies all decisions, orders, decrees, and records of the Board to the appropriate Superior Court when cases are appealed.
- (c) The principal office of the Board is in Montpelier, Vermont, except that communications may be filed directly with a judge during the period a case is within his jurisdiction unless otherwise provided herein.

2200.3 Use of gender and number.

- (a) Words importing the singular number may extend and be applied to the plural and vice versa.
- (b) Words importing the masculine gender may be applied to the feminine gender.

2200.4 Computation of time.

- (a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or State holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and State holidays shall be excluded in the computation.
- (b) Where service of a pleading or document is by mail pursuant to Section 2200.7 of this subpart, 3 days shall be added to the time allowed by these rules for the filing of a responsive pleading.

2200.5 Extensions of time.

Requests for extensions of time for the filing of any pleading

or document must be received in advance of the date on which the pleading or document is due to be filed.

2200.6 Record address.

The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly in writing to the Board or its judge, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

2200.7 Service and notice.

- (a) At the time of filing pleadings or other documents, a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.
- (b) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.
- (c) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).
- (d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- (e) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.
- (f) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.
- (g) In the event that there are any affected employees not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor and Industry for violation of the Vermont Occupational Safety and Health Code. The citation has been contested and will be the subject of a hearing before the Vermont Occupational Safety and Health Review Board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Vermont Occupational Safety and Health Review Board in its rules of procedure. Notice of intent to participate should be sent to:

Vermont Occupational Safety and Health Review Board
State Administration Building Post Office
13 Baldwin Street
Montpelier, Vermont 05602

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees,
preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor and Industry for abatement of the violation has been contested and will be the subject of a hearing before the Vermont Occupational Safety and Health Review Board.

- (h) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.
- (i) A copy of the notice of hearing to be held before the Board or its judge, as the case may be, shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.
- (j) A copy of the notice of the hearing to be held before the Board or its judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of

the date such notice is received by the employer.

- (k) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with Section 2200.35 of this part, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.
- (l) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.
- (m) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.
- (n) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

2200.8

Filing.

- (a) All papers shall be filed with the Clerk of the Board except, however, in the event the Board assigns the case to one of its judges. Subsequent to said assignment, and prior to the issuance of his decision, all papers shall be filed with the judge at the address given in the notice of such assignment. Subsequent to the issuance of his decision, all papers shall be filed with the Clerk.
- (b) Unless otherwise ordered, all filing may be accomplished by first class mail.
- (c) Filing is deemed effected at the time of mailing.

2200.9

Consolidation.

Cases may be consolidated on the motion of any party, on the Board's or its judge's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the VOSHA Code require.

2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, the Board or its judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

2200.11 Protection of trade secrets and other confidential information.

Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by 21 VSA Section 207, the Board or its judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

SUBPART B - PARTIES AND REPRESENTATIVES

2200.20 Party status.

- (a) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the Board or its judge unless, for good cause shown, the Board or its judge allows such election at a later time. See also Section 2200.21.
- (b) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the Board or its judge. See also Section 2200.21.

2200.21 Intervention; appearance by nonparties.

- (a) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the Board or its judge.
- (b) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.
- (c) The Board or its judge may grant a petition for intervention to such an extent and upon such terms as the Board or its judge shall determine.

2200.22 Representatives of parties and intervenors.

- (a) Any party or intervenor may appear in person or through a representative.
- (b) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.
- (c) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.
- (d) Nothing contained herein shall be construed to require any representative to be an attorney-at-law.

(e) Withdrawal of appearance of any representative may be affected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

SUBPART C - PLEADINGS AND MOTIONS

2200.30 Form.

- (a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 2200.31, which shall include the Board's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.
- (b) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size paper. Pleadings and other documents shall be fastened at the upper left corner.
- (c) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.
- (d) When a court decision is cited in which the first-listed parties on each side are the Secretary of Labor (or the name of a particular Secretary of Labor) or the Commissioner of Labor and Industry (or the name of a particular Commissioner of Labor and Industry) and the Review Board or Review Commission, the citation shall include in parenthesis the name of the respondent in the Board or Commission proceeding. For example: Brennan v. OSHRC (Vy Lactos Laboratories, Inc.), 494 F.2d 460 (8th Cir. 1974).
- (e) The Board may refuse for filing any pleading or document which does not comply with the requirements of paragraphs (a), (b), (c), and (d) of this section.

2200.31 Caption; titles of cases.

- (a) Cases initiated by a notice of contest shall be titled:
Commissioner of Labor and Industry, Complainant vs.
(Name of Contestant), Respondent.
- (b) Cases initiated by a petition for modification of the abatement period shall be titled:
(Name of employer), Petitioner vs. Commissioner of Labor and Industry, Respondent.

- (c) The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.
- (d) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Board.

2200.32 Notices of contest.

The Commissioner shall, within 7 days of receipt of a notice of contest, transmit the original to the Board, together with copies of all relevant documents.

2200.33 Employer contests.

(a) Complaint.

- (1) The Commissioner shall file a complaint with the Board no later than 20 days after his receipt of the notice of contest.
- (2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:
 - (i) The basis for jurisdiction;
 - (ii) The time, location, place, and circumstances of each such alleged violation; and
 - (iii) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation is based.
- (3) Where the Commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) Answer.

- (1) Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Board.
- (2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

Petitions for modification of abatement period.

- (a) An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.
- (b) A petition for modification of abatement date shall be in writing and shall include the following information:
 - (1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
 - (2) The specific additional abatement time necessary in order to achieve compliance.
 - (3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
 - (4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (c) A petition for modification of abatement date shall be filed with the Commissioner of Labor and Industry who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.
 - (1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of 10 days.
 - (2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Commissioner. Failure to file such objection within 10 working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.
 - (3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subparagraphs (b) and (c). Such uncontested petitions shall become final orders pursuant to 21 VSA, Sections 226(a) and (c).

- (4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen working days from the date the petition was posted pursuant to paragraphs (c)(1) and (2) by the employer.
- (d) Where any petition is objected to by the Commissioner or affected employees, such petition shall be processed as follows:
 - (1) The petition, citation and any objections shall be forwarded to the Board within 3 working days after the expiration of the fifteen day period set out in paragraph (c)(4).
 - (2) The Board shall docket and process such petitions as expedited proceedings as provided for in Section 2200.101 of this part.
 - (3) An employer petitioning for a modification of abatement period shall have the burden of proving in accordance with the Vermont Rules of Civil Procedure that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.
 - (4) Within 10 working days after the receipt of notice of the docketing by the Board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

2200.35

Employee contests.

- (a) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Commissioner shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.
- (b) Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.
- (c) All contests under this section shall be handled as expedited proceedings as provided for in Section 2200.101 of this part.

2200.36 Statement of position.

At any time prior to the commencement of the hearing before the Board or its judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

2200.37 Response to motions.

Any party or intervenor upon whom a motion is served shall have 10 days from service of the motion to file a response.

2200.38 Failure to file.

Failure to file any pleading pursuant to these rules when due may, in the discretion of the Board or its judge, constitute a waiver of the right to further participation in the proceedings.

SUBPART D - PREHEARING PROCEDURES AND DISCOVERY

2200.51 Prehearing conference.

- (a) At any time before a hearing, the Board or its judge, on its own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider settlement or matters which will tend to simplify the issues or expedite the hearing.
- (b) The Board or its judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

2200.52 Requests for admissions.

- (a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen days after service of the request, or within such shorter or longer time as the Board or the judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.
- (b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of Section 2200.7(a) and filed with the Board within the time allotted and shall be a part of the record.

2200.53 Discovery depositions and interrogatories.

- (a) Except by special order of the Board or its judge, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.
- (b) In the event the Board or its judge grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

2200.54 Failure to comply with orders for discovery.

If any party or intervenor fails to comply with an order of the Board or its judge to permit discovery in accordance with the

provisions of these rules, the Board or its judge may issue appropriate orders.

2200.55

Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.

- (a) Any member of the Board shall, on the application of any party directed to the Board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas, if filed subsequent to the assignment of the case to a judge shall be filed with the judge. A judge shall grant the application on behalf of any member of the Board. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.
- (b) Any person served with a subpoena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The Board or its judge, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law, the subpoena is otherwise invalid. The Board or its judge shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.
- (c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.
- (d) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the Board by the Attorney General shall initiate proceedings in the appropriate court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Code. Neither the Board nor the Attorney General shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

SUBPART E - HEARINGS

2200.60 Notice of hearing.

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least 10 days in advance of such hearing, except as otherwise provided in Section 2200.101.

2200.61 Postponement of hearing.

- (a) Postponement of a hearing ordinarily will not be allowed.
- (b) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least 3 days in advance of the time set for the hearing.
- (c) No postponement in excess of 30 days shall be allowed without Board approval.

2200.62 Failure to appear.

- (a) Subject to the provisions of paragraph (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board or its judge, and to request Board review pursuant to Section 2200.91 in the case of a judge's decision.
- (b) Request for reinstatement must be made, in the absence of extraordinary circumstances, within 5 days after the scheduled hearing date.
- (c) The Board or its judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

2200.63 Payment of witness fees and mileage; fees of persons taking depositions.

Witnesses summoned before the Board or the judge shall be paid the same fees and mileage that are paid witnesses in the courts of the State of Vermont, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the State of Vermont. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

2200.64 Reporter's fees.

Reporter's fees shall be borne by the Board.

2200.65 Transcript of testimony.

- (a) Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the judge. The judge shall promptly serve notice upon each of the parties and intervenors of such filing.
- (b) When the hearing has been before the members of the Board themselves rather than before a judge of the Board, the requirements pertaining to transcripts shall not apply.

2200.66 Duties and powers of the Board and its judges.

It shall be the duty of the Board and its judges to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Board and its judges (with respect to cases assigned to them between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Board) shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Issue authorized subpoenas;
- (c) Rule upon petitions to revoke subpoenas;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Take or cause depositions to be taken whenever the needs of justice would be served;
- (f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (g) Hold conferences for the settlement or simplification of the issues;
- (h) Dispose of procedural requests or similar matters including motions referred to the judge by the Board and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of a decision;

- (i) Make decisions in accordance with the Rules of Civil Procedure;
- (j) Call and examine witnesses and to introduce into the record documentary or other evidence;
- (k) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
- (l) Adjourn the hearing as the needs of justice and good administration require;
- (m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Board.

2200.67 Disqualification of Board members and/or Board judges.

- (a) A Board member or judge may withdraw from a proceeding whenever he deems himself disqualified.
- (b) Any party may request the Board member or judge, at any time following the judge's designation and before the filing of the decision, to withdraw on ground of personal bias or disqualification, by filing with the Board or the judge promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.
- (c) If, in the opinion of the Board or the judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the member or judge shall forthwith disqualify himself and withdraw from the proceeding.
- (d) If the member or judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed in the issuance of a decision, and the provisions of Section 2200.90 shall thereupon apply.

2200.68 Examination of witnesses.

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

2200.69 Affidavits.

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

2200.70 Deposition in lieu of oral testimony; application; procedures, form; rulings.

- (a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the Board or its judge, as the case may be, and shall be served on all other parties and intervenors not less than 7 days (when the deposition is to be taken within the continental United States) and not less than 15 days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the Board or its judge shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.
- (b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or the State of Vermont or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.
- (c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is

not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with his certificate, in person or by registered mail, to the Clerk of the Review Board, 13 Baldwin Street, Montpelier, Vermont 05602.

- (d) The Board or its judge shall rule upon the admissibility of the deposition or any part thereof.
- (e) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been discovered.
- (f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

2200.71 Exhibits.

- (a) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.
- (b) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the Board or its judge pursuant to Section 2200.72.
- (c) Unless the Board or its judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.
- (d) All exhibits offered, but denied admission into evidence, shall be identified as in paragraph (a) of this section and shall be placed in a separate file designated for rejected exhibits.

2200.72 Rules of evidence.

Hearings before the Board and its judges shall be in accordance with the Vermont Rules of Civil Procedure insofar as practicable.

2200.73 Burden of Proof.

- (a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner.
- (b) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

2200.74 Objections.

- (a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Board or its judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.
- (b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

2200.75 Interlocutory appeals.

(a) Generally.

A judge's interlocutory ruling may be appealed to the Board only in the manner prescribed by this rule.

(b) Certification.

A party desiring to appeal from an interlocutory ruling shall file with the judge a written request for certification of the appeal. The request and supporting documents shall be filed within 5 days after receipt of the judge's ruling from which appeal is sought. Responses to the request, if any, shall be filed within 5 days after service of the request. The judge shall certify an interlocutory appeal when the ruling involves an important question of law or policy about which there is substantial ground for difference of opinion and an immediate appeal of the ruling may materially expedite the proceedings.

(1) Procedure after certification.

Following certification, the judge shall forward to the Clerk the request for certification and supporting documents, responses filed by the other parties, the ruling from which appeal is taken, a copy of relevant portions of the record, and the judge's order certifying the appeal.

(2) Acceptance of certification, discretionary.

The Board at any time may decline to accept a certification.

(c) Petition for interlocutory appeal.

Within 5 days following the receipt of a judge's order denying certification, a party may file with the Board a petition for interlocutory appeal. Responses to the petition, if any, shall be filed within 5 days following service of the petition. The Board shall grant a petition for interlocutory appeal only in exceptional circumstances where it finds (1) that the appeal satisfies the criteria for certification of an appeal set forth in paragraph (b) of this section; and (2) that there is a substantial probability of reversal.

(d) Denial without prejudice.

The Board's action in declining to accept a certification or denying a petition for interlocutory appeal shall not preclude a party from raising an objection to the judge's interlocutory ruling in a petition for discretionary review. A party whose request for certification of an interlocutory appeal is denied by a judge and who elects not to file a petition for interlocutory appeal with the Board shall not be precluded from raising in a petition for discretionary review an objection to the ruling from which interlocutory appeal was sought.

(e) Stay.

(1) Trade secret matters.

The filing with a judge of a request to certify an interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling: (i) until the judge denies the request; or (ii) if the request is granted, until the Board rules on the appeal or declines to accept the certification. In the event such a request is denied, the judge, upon motion of the requesting party, shall stay for a period of 5 days the effect of the ruling from which appeal was sought in order to allow the party to petition the Board for interlocutory appeal of the ruling. The filing with the Board of a petition for interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling until the Board denies the petition or rules on the appeal.

(2) Other cases.

In all other cases, the filing or granting of a request

to certify an interlocutory appeal, or the filing or granting of a petition for interlocutory appeal, shall not stay a proceeding or the effect of a ruling unless otherwise ordered..

(f) Briefs.

Should the Board desire briefs on the issues raised by an interlocutory appeal, it shall give notice to the parties. See Section 2200.93, Briefs before the Board.

2200.76 Filing of briefs and proposed findings with the Board or its judge; oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Board or its judge. The Board or its judge may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

SUBPART F - POST HEARING PROCEDURES

2200.90 Decisions of the Board and its judges.

- (a) In the event the hearing on the merits has been held before the Board, the Board's decision shall:
 - (1) Include findings of fact, conclusions of law, and an order.
 - (2) Be signed and dated. Upon issuance of the decision, jurisdiction shall rest solely in the Board, and all motions, petitions and other pleadings filed subsequent to such issuance shall be addressed to the Board.
- (b) In the event the hearing on the merits is before a judge of the Review Board:
 - (1) The judge shall prepare a decision upon completion of the proceeding. When a hearing is held, the decision shall comply with 3 VSA Section 812. Copies of the decision shall be mailed to all parties. Thereafter, the judge shall file with the Clerk a report consisting of his decision, the record in support thereof, and any petitions for discretionary review of his decision, or statements in opposition to such petitions, that may be filed in accordance with Section 2200.91. The judge shall file his report on the day following the close of the period for filing petitions for discretionary review, or statements in opposition to such petitions, but no later than the twenty-first day following the date of the mailing of the decision to the parties.
 - (2) (i) Promptly upon receipt of the judge's report, the Clerk shall docket the case and notify all parties of that fact. The date of docketing shall be the date that the judge's report is made for purposes of 21 VSA Section 230(b).
 - (ii) On or after the date of docketing of the case, all pleadings or other documents that may be filed in the case shall be addressed to the Clerk.
 - (iii) In the event no Board member directs review of a decision on or before the thirtieth day following the date of docketing of the judge's report, the decision of the judge contained therein shall become a final order of the Board.

Discretionary review; petitions for; statements in opposition.

- (a) A party aggrieved by the decision of a judge may submit a petition for discretionary review. An aggrieved party that fails to file a petition for such review by the Board may be foreclosed from court review of any objection to the judge's decision. Keystone Roofing Co., Inc. v. Dunlop, 539 F.2d 960 (3rd Cir. 1976).
- (b)
 - (1) Except as provided in paragraphs (b)(2) and (3) of this section, any petition must be received by the judge at his office on or before the twentieth day following his mailing of a copy of the decision to the parties.
 - (2) When there is no objection by any party, when an expedited proceeding has been directed pursuant to Section 2200.101, or for other good cause, the judge is empowered to prescribe a shorter time for filing petitions for discretionary review following the mailing of his decision.
 - (3) Petitions for review of a judge's decision may be filed directly with the Clerk subsequent to the filing of the judge's report. Such petitions will be considered to the extent that time and resources permit. Parties filing such petitions should be aware that any action by a Board member directing review must be taken within thirty days following the filing of the judge's report.
 - (4) In the case of proposed settlements or other proposed dispositions by consent of all parties, petitions for discretionary review shall not be allowed, except for good cause shown.
- (c) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The inclusion of precise citations to the record or legal authorities, as the case may be, will facilitate prompt review of the petition.
- (d) Failure to act on such petition within the review period shall be deemed a denial thereof.
- (e) Statements in opposition to petitions for discretionary review may be filed at the times and places specified in this section for the filing of petitions for discretionary review. Any statement shall contain a concise statement on each portion of the petition to which it is addressed.
- (f) An original and three copies of any petition or statement shall be filed with the Board.

2200.92 Review by the Board.

- (a) Review is a matter of sound discretion of a member of the Board.
- (b) In exercising discretion, a Board member will consider assertions of the following:
 - (1) A finding of material fact is not supported by a preponderance of the evidence.
 - (2) The decision is contrary to law or to the duly promulgated rules or decisions of the Board.
 - (3) A substantial question of law, abuse of discretion, or policy is involved.
 - (4) A prejudicial error of procedure was committed.
- (c) When a petition for discretionary review is granted, review shall be limited to the issues specified in the petition, unless the order for review expressly provides differently.
- (d) At any time within 30 days after the filing of a decision of a judge, a case may also be directed for review by a member upon his own motion upon any ground that could be raised by a party, but the issues would normally be limited to novel questions of law or policy or questions involving conflict in judges' decisions. Any direction for review shall state the issues with particularity. Except in extraordinary circumstances, the Board's power to review is limited to issues of law or fact raised by the parties in the proceedings below. (21 VSA Sections 230(c) and (d).)

2200.93 Briefs before the Board.

(a) Requests for briefs.

The Board ordinarily will request the parties to file briefs on issues before the Board. When briefs are requested, a party may file a letter setting forth its arguments instead of filing a brief. The provisions of this rule shall apply to such letters.

(b) Time for filing briefs.

When briefs are requested under paragraph (a), a briefing notice shall be issued to the parties at a time reasonably in advance of the date when the case is scheduled for disposition at a Board meeting. Unless the briefing notice provides otherwise, the time for filing of briefs shall be as follows:

(1) Appeal by one party.

A party whose petition for review or for interlocutory appeal is granted or whose interlocutory appeal is certified shall file a brief within 40 days after the date of the briefing notice. All other parties shall file briefs within 30 days after the brief of the petitioning or appealing party is served.

(2) Appeals by two or more parties.

When petitions of two or more parties are directed for review, each such party shall file an initial brief addressing the issues on which it appeals within 40 days after the date of the briefing notice and may file a brief responding to the initial brief of the other party within 30 days after the initial brief of the other party or parties is served. This sequence of briefing shall be followed in the event that two or more parties' petitions for interlocutory appeal are granted or two or more parties' interlocutory appeals are certified.

(3) Direction for review on the motion of a Board member.

When no petition for discretionary review is granted and a member directs review of a judge's decision on his own motion, all briefs shall be filed within 40 days after the date of the briefing notice.

(4) Additional briefs.

Additional briefs shall not be allowed except by leave of the Board.

(c) Motion for extension of time for filing brief.

Any extension of time to file a brief shall not be granted except in extraordinary circumstances. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section and shall include the following information: When the brief is due, the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reasons for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) Consequences of late filing of brief.

The Board may decline to accept a brief that is not timely filed.

(e) Length of brief.

Except by permission of the Board, a brief shall contain no more than 35 pages of text.

(f) Table of contents.

A brief in excess of 15 pages shall include a table of contents.

(g) Failure to meet requirements.

The Board may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) Number of copies.

Five copies of a brief shall be filed. See Section 2200.7(a).

2200.94 Stay of final order.

- (a) Any party aggrieved by a final order of the Board may, while the matter is within the jurisdiction of the Board, file a motion for a stay.
- (b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.
- (c) The Board may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

2200.95 Oral argument before the Board.

- (a) Oral argument before the Board ordinarily will not be allowed.
- (b) Oral argument before the Board will be granted upon request of a party.
- (c) In the event the Board desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

SUBPART G - MISCELLANEOUS PROVISIONS

2200.100 Settlement.

(a) Policy.

Settlement is permitted at any stage of the proceedings. Settlements submitted for consideration after the judge's decision has been directed for review shall be filed with the Clerk. A settlement proposal shall be approved when it is consistent with the provisions and objectives of the Code.

(b) Requirements.

Every settlement proposal submitted to the judge or Board shall include, where applicable, the following:

- (1) A motion to amend or withdraw a citation, notification of proposed penalty, notice of contest, or petition for modification of abatement;
- (2) A statement that payment of the penalty has been tendered or a statement of a promise to pay; and
- (3) A statement that the cited condition has been abated or a statement of the date by which abatement will be accomplished.

(c) Filing; service and notice.

When a settlement proposal is filed with the judge or Board, it shall also be served upon represented and unrepresented affected employees in the manner prescribed for notices of contest in Section 2200.7. Proof of service shall accompany the settlement proposal. A settlement proposal shall not be approved until at least 10 days following service of the settlement proposal on affected employees.

2200.100a Withdrawal of notice of contest.

At any stage of the proceedings, a party may move to withdraw its notice of contest or any portion of its notice of contest. The motion shall include a statement that a promise of another party has not led to the motion to withdraw the notice of contest. The rule on settlements, Section 2200.100, shall apply whenever a promise of another party has led to the party's motion to withdraw.

2200.101 Expedited proceeding.

- (a) Upon application of any party or intervenor or upon his own motion, any Board member may order an expedited proceeding. Contests arising under Sections 2200.34 and 2200.35 shall be placed on a special docket and treated as expedited proceedings before Board judges or Board members. Cases arising under these sections which are directed for review before the Board shall also be placed on a special docket for review, and shall be treated as expedited proceedings under this section.
- (b) When such proceeding is ordered, the Clerk shall notify all parties and intervenors.
- (c) The Board or its judge, as the case may be, shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

2200.102 Standards of conduct.

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the State of Vermont.

2200.103 Ex parte communication.

- (a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Board, including any member, officer, employee, or agent of the Board who is employed in the decisional process, and any of the parties or intervenors.
- (b) In the event such ex parte communication occurs, the Board or its judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Board may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and wilfully makes or solicits the making of a prohibited ex parte communication.

2200.104 Restrictions as to participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to the rules in this part, the

Commissioner shall not participate or advise with respect to the report of the judge or the Board's decision.

2200.105 Inspection and reproduction of documents.

- (a) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the Board, inspect and copy any document filed in any proceeding.
- (b) Costs shall be borne by such person.

2200.106 Restrictions with respect to former employees.

- (a) No former employee of the Board or the Commissioner (including a member of the Board or the Commissioner) shall appear before the Board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.
- (b) No former employee of the Board or the Commissioner (including a member of the Board or the Commissioner) shall appear before the Board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one year has elapsed since the termination of such employment.

2200.107 Amendments to rules.

The Board may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein in accordance with the Administrative Procedures Act. Such suggestions should be addressed to the Board at 13 Baldwin Street, Montpelier, Vermont 05602.

2200.108 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the Board may, upon application by any party or intervenor, or on its own motion, after 3 days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Code requires.

2200.109 Penalties.

- (a) All penalties assessed by the Board are Civil.
- (b) The Board has no jurisdiction under Section 210(b)(1), (2), (3), or (4) of the Code and will conduct no proceeding thereunder.

2200.110 Official Seal - Vermont Occupational Safety and Health Review Board.

The seal of the Review Board shall consist of: a landscape in the foreground or base; high mountains above, extending into the sky; a pine tree extending near the base nearly to the top; sheaves of grain three in number, placed diagonally on the right side; a cow standing on the left side of the field; the whole encircled by a shield further encircled by a band inscribed "STATE OF VERMONT + VOSHA REVIEW BOARD."

SUBPART M - SIMPLIFIED PROCEEDINGS

2200.200 Purpose.

- (a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Vermont Occupational Safety and Health Act so that parties before the Board may save time and expense while preserving fundamental procedural fairness. The rules shall be construed and applied to accomplish these ends.
- (b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Board's rules of procedure are the following:
 - (1) Pleadings generally are not permitted or required. Early discussions among the parties will inform the parties of the legal and factual matters in dispute and narrow the issues to the extent possible.
 - (2) Discovery is generally not permitted.
 - (3) The Rules of Evidence as applied in the Superior Courts of the State of Vermont shall not apply.
 - (4) Interlocutory appeals are not permitted.

2200.201 Application.

The rules in this subpart shall govern proceedings before the Board or a judge when (a) the case is eligible for simplified proceedings under Section 2200.202, (b) any party requests simplified proceedings, and (c) no party files an objection to the request.

2200.202 Eligibility for simplified proceedings.

A case is eligible for simplified proceedings unless it concerns an alleged violation of Section 223(a) of the Act or an alleged failure to comply with a standard listed in table A.

Table A

All standards listed are found in the VOSHA Program Rules, Chapter 7.

Section 1910.94
Section 1910.95

Section 1910.96
Section 1910.97

Sections 1910.1000 to Section 1910.1045, and any occupational

health standard that may be added to subpart Z of part 1910.
Section 1926.52 Section 1926.55
Section 1926.53 Section 1926.57
Section 1926.54 Section 1926.800(c)

2200.203 Commencing simplified proceedings.

(a) Requesting simplified proceedings.

(1) Who may request.

Any party may request simplified proceedings.

(2) When to request.

After the Board receives an employer's or employee's notice of contest or petition for modification of abatement, the Clerk shall issue a notice indicating that the case has been docketed. A request for simplified proceedings, if any, shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise.

(3) How to request.

A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be filed with the Clerk and served in the manner prescribed for notices of contest in Section 2200.7.

(4) Effect of the request.

For those cases eligible under Section 2200.202, simplified proceedings are in effect when any party requests simplified proceedings and no party files a timely objection to the request.

(b) Objecting to simplified proceedings.

(1) Who may object.

Any party may object to a request for simplified proceedings.

(2) When to object.

An objection shall be filed within 15 days after the request for simplified proceedings is served.

(3) How to object.

A simple statement is all that is necessary. For example, "I object to simplified proceedings" will suffice. An objection shall be filed with the Clerk and served in the manner prescribed for notices of contest in Section 2200.7.

(4) Effect of the objections.

The filing of a timely objection shall preclude the institution of simplified proceedings.

(c) Notice.

(1) When the period for objecting to simplified proceedings expires and no objection has been filed, the Board shall notify all parties that simplified proceedings are in effect.

(2) When a party files a timely objection to a request for simplified proceedings, the Board shall notify all parties that the case shall continue under conventional procedures (Subparts A through G).

2200.204 Filing of pleadings.

(a) Complaint and answer.

There shall be no complaint or answer in simplified proceedings. If the Commissioner has filed a complaint under Section 2200.33, a response to an employee contest under Section 2200.35, or a response to a petition under Section 2200.34, the complaint or response shall not be included in the record. No response to these documents shall be required.

(b) Motions.

A primary purpose of simplified proceedings is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties prior to the conference/hearing.

2200.205 Discussion among parties.

Within a reasonable time before the conference/hearing, the parties shall meet, or confer by telephone, and discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter.

2200.206 Conference/Hearing.

- (a) The Board or its judge shall schedule and preside over a conference/hearing, which shall be divided into two segments: a conference and a hearing.

(b) Conference.

At the beginning of the conference, the Board or its judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in Section 2200.205. The parties and the Board or its judge then shall attempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Board or its judge shall enter into the record any further agreements reached by the parties.

(c) Hearing.

The Board or its judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with 3 VSA Section 809.

(1) Evidence.

Oral or documentary evidence shall be received, but the Board or its judge may exclude irrelevant or unduly repetitious evidence. Testimony shall be given under oath. The Rules of Evidence as applied in the Superior Courts of the State of Vermont shall not apply.

(2) Oral and written argument.

Each party may present oral argument at the close of the hearing. Parties wishing to present written argument shall notify the Board or its judge at the conference/hearing so that the Board or its judge may set a reasonable period for the prompt filing of written argument.

2200.207 Reporter present; transcripts.

A reporter shall be present at the conference/hearing. An official verbatim transcript of the hearing shall be prepared and filed with the judge. Parties may purchase copies of the transcript from the reporter. When the hearing has been before the members of the Board themselves rather than before a judge, the requirements pertaining to transcripts shall not apply.

2200.208 Decision of the Board or its judge.

- (a) The Board or its judge shall issue a written decision in accordance with Section 2200.90.
- (b) After the issuance of the Board's or its judge's decision, the case shall proceed in the conventional manner (Subparts A through G).

2200.209 Discovery.

Discovery, including requests for admissions, shall not be allowed except by order of the Board or its judge.

2200.210 Interlocutory appeals not permitted.

Appeals to the Board of a ruling made by a judge which is not the judge's final disposition of the case are not permitted.

2200.211 Applicability of Subparts A through G.

Sections 2200.6, 2200.33, 2200.34(d)(4), 2200.35, 2200.36, 2200.38, and 2200.75 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Board's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.